

on the part of the defendant, prays the court to decree its specific execution. The answer sets up a contract essentially differing from that stated in the bill, which it alleges the defendant did not sign, nor authorize any person to sign for him, and further contends, that even if said paper is genuine, "it is so radically and materially defective, and is so clearly unequal in its operation and effect, as to afford the complainant no right to proceed against this defendant in this, or any other form of action whatever, either at law or in equity," and the defendant craves the benefit of this objection as though regularly and formally pleaded.

Assuming, then, the paper to be genuine, and the assumption is made for the purpose of testing the force of the objection, and without meaning to decide the question of fact, one way or the other, it becomes necessary to consider whether the contract in question is of such a character as to justify the interposition of the extraordinary authority of this court to compel its specific execution. It is a conceded principle, that this branch of the jurisdiction of the court, is not a matter of right in the parties, and to be demanded *ex debito justitiæ*. The application, when this arm of the court is invoked, is addressed to its sound and reasonable discretion, and is granted or rejected according to the circumstances of the case. And as was said by the Court of Appeals in *Geiger et al. vs. Green*, decided at December term, 1846, "the court must be satisfied that the contract sought to be enforced is fair and just, and reasonable, and equal in all its parts." The court in the same case, quote with approbation, the doctrine of Lord Redesdale in 1 *Sch. & Lef.*, 18, expressed in these terms, "I have no conception that a court of equity ought to decree a specific performance in a case, except where *both parties had, by the agreement*, a right to compel a specific performance, according to the advantage which they might be supposed to have derived from it, because otherwise it would follow that the court would decree a specific performance where the party called upon to perform, might be in this situation, that if the agreement was disadvantageous to him he would be liable to the performance, and yet,